

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PERRY S. KOHRS,  
RESPONDENT  
vs.**

**FAMILY SUPPORT DIVISION, MISSOURI DEPARTMENT OF SOCIAL SERVICES,  
ET AL.,  
APPELLANT**

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DOCKET NUMBER WD75440

DATE: JUNE 11, 2013

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Appeal from:

The Circuit Court of Platte County, Missouri  
The Honorable Thomas C. Fincham, Judge

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Appellate Judges:

Division Three: Cynthia L. Martin, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

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Attorneys:

Lance W. Lefevre, for Respondent

Nicolas Taulbee, for Appellant

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MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

PERRY S. KOHRS, RESPONDENT

v.

FAMILY SUPPORT DIVISION, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET  
AL., APPELLANT

WD75440

Platte County, Missouri

Before Division Three Judges: Cynthia L. Martin, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

The Family Support Division of the Missouri Department of Social Services ("the Division") appeals from a judgment entered in the Circuit Court of Platte County in favor of Perry Kohrs ("Father") in his action against the Division for money had and received. After entering an invalid and void administrative order that Father pay child support, when there was an existing court order addressing child support and ordering Mother to pay child support to Father, the Division issued an income withholding order to the Social Security Administration to withhold \$100.00 per month from Father's Social Security benefits for arrears in Father's payments under the administrative order. The withheld money was paid to the Family Support Payment Center ("FSPC"), which is a state entity operated by a contractor directly responsible to the Division. The FSPC disbursed all of the money received from the Social Security Administration to the child's mother. The case was submitted to the trial court on stipulated facts, and the trial court entered judgment in favor of Father in the amount of \$4,400.00.

**REVERSED.**

**Division One holds:**

(1) "In order for a plaintiff to make a submissible case for money had and received, he must establish the following elements: (1) that the defendant received or obtained possession of the plaintiff's money; (2) **that the defendant thereby appreciated a benefit**; and (3) that the defendant's acceptance and retention of the money was unjust." ***School Dist. of Kansas City, Missouri v. Missouri Bd. of Fund Comm'rs***, 384 S.W.3d 238, 272 (Mo. App. W.D. 2012) (emphasis added and internal quotation omitted). Accordingly, the Division's appreciation of a benefit from Father's withheld Social Security benefits was a requisite element of his claim.

(2) Since Father stipulated that the Division did not benefit from the money collected, he could not establish that necessary element of his claim, and judgment should have been entered in favor of the Division.

(3) Pursuant the authority granted by Rule 84.14 for an appellate court to enter the judgment that the trial court should have entered, judgment is entered in favor of the Division.

Opinion by Joseph M. Ellis, Judge

Date: June 11, 2013

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